COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

LEONARD DiBARTOLOMEO,
Appellant
v.

G1-12-58

CITY OF REVERE,
Respondent

Appearance for Appellant:

Kevin P. Foley, Esq.
Attorney Kevin P. Foley, PC
60 Washington Street, Suite 201
Salem, MA 02170

Appearance for Respondent:

Daniel E. Doherty, Esq.
Assistant City Solicitor
281 Broadway
Revere, MA 02151

Commissioner:

Cynthia A. Ittleman[1]

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Leonard DiBartolomeo (hereinafter "Appellant"), seeks review of the reasons given by the City of Revere (hereinafter "Respondent") used to justify bypassing the Appellant for original appointment to the position of Police Officer. The Appellant filed a timely appeal with the Civil Service Commission (hereinafter "Commission") on February 12, 2012. A pre-hearing conference was held on April 10, 2012. At the pre-hearing conference, the Respondent submitted a Motion to Dismiss, and

[1] The Commission acknowledges the assistance of Law Clerk Hunter Holman in drafting this decision.

the Appellant submitted a Motion to Reverse the Decision to Bypass. The parties submitted responses to each the other's motion by April 24, 2012. Both motions were subsequently denied on June 1, 2012. A full hearing before the Commission was held on June 6, 2012. The full hearing was digitally recorded and copies of the recordings were sent to the parties on compact disks. Post-hearing recommended decisions were filed on July 11, 2012. For the reasons stated herein, the appeal is denied.

Findings of Fact

Based on the eleven (11) exhibits admitted (1-7, offered jointly; 8 and 9, offered by the Respondent; and 10 and 11, offered by the Appellant), the testimony of the following witnesses:

For the Appointing Authority:

- Terence Reardon, Captain (formerly Chief) of the Revere Police Department

For the Appellant:

- Leonard DiBartolomeo, Appellant,

taking administrative notice of all matter filed in this case, as well as all pertinent statutes, case law, rules, regulations and policies, and drawing reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following:

1. The Appellant was in the Air Force from May 25, 2004 to September 28, 2006. He was generally discharged due to multiple instances of misconduct. (DiBartolomeo Test.)
2. As of the time of the Commission hearing, the Appellant had been in the Army National Guard for "a little over four (4) years," and is still a member. (DiBartolomeo Test.) He has received recognition for "exceptionally meritorious service" during his time in the

Army National Guard as a member of the 8th Military Police Brigade; his service includes one year in Iraq. (Ex. 6; DiBartolomeo Test.) He holds a license to carry a firearm ("LTC") issued by the Revere Police Department. (Exs. 3 and 8)

3. At the time of the hearing before the Commission, the Appellant was a full-time student at Salem State University, studying Criminal Justice. (DiBartolomeo Test.)
4. The Appellant took the civil service examination for municipal police officer on April 30, 2011 and he scored a 97. (Stipulated Facts)
5. The eligible list for the police officer position was established on November 1, 2011. (Stipulated Facts)
6. A Certification #202390 for appointment of up to ten (10) permanent fulltime police officers was issued on or about November 15, 2011. (Stipulated Facts, Administrative Notice) The Appellant was tied for second among those who signed the Certification willing to accept the position. (Stipulated Facts)
7. The Appellant signed his application for the police officer position on December 5, 2011. (Ex. 7)
8. The Appellant stated on his employment application for the police officer position that he had never taken steroids. (Exs. 2 and 7). Page 1 of the Recruit Candidate Informational Packet includes the following: "**ANY MISSTATEMENT OF FACT, OR OMISSION OF MATERIAL INFORMATION REQUESTED INTHIS QUESTIONNARIE, WILL BE GROUNDS TO DISQUALITY YOU FOR ANY EMPLOYMENT WITH THE REVERE POLICE DEPARTMENT**." (Ex. 7)(emphasis in original)
9. As part of the hiring process, Detective Stacey Bruzzese was assigned to perform a background investigation on the Appellant. (Reardon Test.)

10. The background investigation found that, on February 2, 2002, a civil abuse prevention order (hereinafter "ABO") was issued against the Appellant following a complaint filed in court by the Appellant's high school girlfriend at the time, Ms. C. (Ex. 9)
11. The background investigation further revealed that Ms. C reported in her affidavit to the court in support of her request for an ABO that when she told the Appellant about another boyfriend, the Appellant pushed her with his chest and threatened to punch her in the face and knock her out. (Ex. 9) Ms. C did not report the matter until the Appellant told Ms. C that his sister wanted to fight her. (Ex. 9) The Appellant's sister subsequently called Ms. C and threatened to "drag [Ms. C] out of the car and bash [Ms. C's] face in." (Ex. 9) The Appellant's sister also threatened to kill Ms. C. (Ex. 9) After these threats, Ms. C stated that the Appellant fought Ms. C's new boyfriend with a weapon. (Ex. 9) As a result of this behavior, Ms. C claimed that she feared for her safety and that this situation was interfering with her education. (Ex. 9)
12. Two weeks after the court issued the ABO involving Ms. C and the Appellant, a court held a hearing to determine if the ABO should be amended, extended or vacated. The court vacated the ABO at that hearing. (Ex. 9)
13. In or around October or November of 2010, the Appellant moved into a second floor apartment in a house at 51 Glen Road in Swampscott with his girlfriend at the time, Ms. A. (DiBartolomeo Test.)
14. Ms. A moved out of the apartment at the end of December, 2010. (DiBartolomeo Test.) Ms. A told police, who subsequently wrote in their police report of January 14, 2011, that she moved out of the apartment because the fighting between her and the Appellant was

escalating. (Ex. 8) The Appellant moved out of the 51 Glen Road apartment sometime in late January of 2011, after January 14. (Ex. 3, Ex. 8)

15. After Ms. A moved out of the apartment, a friend of the Appellant's, Mr. H, began staying in the apartment frequently, although he did not live there. (DiBartolomeo Test.)
16. On January 14, 2011, at around 3:30-4:00 a.m., Ms. A, accompanied by a friend, Ms. B, drove to the Appellant's apartment on 51 Glen Road in Swampscott. (DiBartolomeo Test., Ex. 8)
17. Ms. A urged the Appellant to come downstairs and talk with her. (DiBartolomeo Test.) When the Appellant did not come downstairs, Ms. A took a pair of hedge clippers that were on the Appellant's porch and began hitting the Appellant's front door with the hedge clippers, causing damage to the door and handle. (DiBartolomeo Test., Ex. 8) Ms. A also attempted to climb onto the roof of an overhang that led to the Appellant's open window on the second floor of the building so that she could get inside the Appellant's apartment. (DiBartolomeo Test., Ex. 8)
18. When her attempts to get into the Appellant's apartment failed and the Appellant still refused to speak with her, Ms. A returned to her vehicle and bumped the back of the Appellant's car with her car. (DiBartolomeo Test., Ex. 8)
19. As Ms. A and Ms. B were driving away from the Appellant's apartment, the Appellant "came out of nowhere" and struck the passenger side window of Ms. A's vehicle with some type of bat, shattering the window and causing glass to fly onto both occupants and into Ms. B's mouth. (Ex. 8) Ms. A and Ms. B did not sustain serious injuries as a result of this incident. (Ex. 8)

20. An unknown individual saw someone strike the window of Ms. A's car and called 911, reporting that a domestic assault and battery had just occurred and that the suspect had used a bat to strike the victim's vehicle. (Ex. 8, DiBartolomeo Test.)
21. Swampscott and Marblehead police responded to the call and arrived at the Appellant's apartment at 51 Glen Street in Swampscott. (Ex. 8)
22. Upon their arrival, the police went to the front and back doors of the Appellant's apartment, identified themselves as police officers and attempted to draw the Appellant outside. (Ex. 8) At that time, the Appellant did not comply and remained inside his apartment. (Ex. 8, DiBartolomeo Test.) The Appellant admitted at the full hearing before the Commission that this was a bad idea. (DiBartolomeo Test.)
23. Ms. A and Ms. B spoke with the police at the Appellant's apartment, telling them that the Appellant was in the military and that he had used a bat, or similar object, to smash the passenger window of Ms. A's vehicle. (Ex. 8) Police were also told by dispatch that the Appellant had an LTC. (Ex. 8)
24. Because the police suspected that the Appellant perpetrated a violent crime, the Appellant was in the military and had a LTC, and the Appellant refused to come out of his apartment initially, the police called in the State Trooper STOP Team (a SWAT team) to help resolve the situation. (Ex. 8) However, before the STOP team arrived, the Appellant came out of his apartment and the police recalled the STOP Team. (Ex. 8)
25. Prior to coming out of his apartment during the events on January 14, 2011, the Appellant called Ms. A's mother as well as his own parents, all of whom arrived at the Appellant's apartment thereafter. (Ex. 8, DiBartolomeo Test.)

26. When the Appellant emerged from his apartment during the events on January 14, 2011, he was arrested and subsequently charged with two (2) counts of assault and battery with a dangerous weapon, and one (1) count of domestic assault and battery. Ms. A refused to press charges and the charges were subsequently dismissed on April 25, 2011 for failure to prosecute. (Exs. 4 and 8)

27. After the Appellant was taken away from his apartment on January 14, 2011, the police interviewed Ms. A and Ms. B more thoroughly and it was discovered that Ms. A and the Appellant had a fight earlier that day and Ms. A went to the Appellant's apartment to speak with him. (Ex. 8) When the Appellant would not talk with her, she hit the door with hedge clippers and attempted to climb up to a second story window of the apartment. (Ex. 8) The Swampscott police noted in their report that they saw footprints "on the garage that led to the front porch roof that was leading to the open, front, second floor window." (Ex. 8) Ms. A also told the police that she bumped the Appellant's car with her car before driving away from the apartment. (Ex. 8) There did not appear to be any damage to either Ms. A's car or the Appellant's car as a result of the bumping. The police report does not indicate whether Ms. A or Ms. B had consumed alcohol at the time of the Swampscott incident. (Ex. 8)

28. Ms. A described the weapon used to break her car window as "some sort of bat" and confirmed that it was a baton after one of the responding officers showed her his police issued baton. Ms. A also told police that the Appellant kept a "baton type weapon" under the seat of his car. (Ex. 8)

29. The police obtained a search warrant and searched the Appellant's apartment. The police search revealed a baton concealed in the drop down ceiling of the Appellant's kitchen. (Ex. 8)

30. The police entered a room of the apartment they believed was the Appellant's bedroom because the Appellant was in the military at that time and because the police found a military uniform on the floor. In the room they believe was the Appellant's bedroom, the police found the following inside a clear plastic bag resting on top of a clothes basket:

    3 containers marked sterile water
    1 glass container marked 200 mg mad muscle ENANTHANE
    1 glass container marked 200 mg mad muscle DURABOLIN
    2 packages of FERTOMID 50 mg
    4 small class (sic) containers with an unknown white substance in them
    1 glass container with a yellow liquid

    Also found in the bedroom was a box of EXCEL 3ml syringes.
    (Ex. 8)

31. As a result of finding the substances in his apartment indicated in the previous Finding of Fact, the Appellant was charged with two (2) counts of possession of a controlled substance (class E) pursuant to G.L. c. 94C, § 34. (Exs. 5 and 8) These charges were dismissed on July 18, 2011, prior to arraignment, for failure to prosecute. (Ex. 5)

32. The substances found were not tested to certify that they were steroids. (DiBartolomeo Test.)

33. As a result of the charges against the Appellant, the Revere Police Department revoked the Appellant's LTC on May 16, 2011. The Appellant appealed the revocation to District Court. Following a hearing on the revocation, the District Court reinstated the Appellant's LTC on January 31, 2012. (Ex. 3) The Respondent did not appeal the judge's decision to reinstate the Appellant's LTC. (Stipulated Fact)

34. As part of Det. Bruzzese's background investigation of the Appellant's application to become a member of the Revere Police Department, Det. Bruzzese contacted the Swampscott Police Department and was given the police report filed after the incident on January 14, 2011, which report detailed the events giving rise to the criminal charges against the Appellant from that date and related matters. (Reardon Test.; Ex. 8)
35. Based on the results of her investigation, Det. Bruzzese recommended that the Appellant be bypassed. (Reardon Test.) After receiving Det. Bruzzese's recommendation, Captain Terence Reardon, Chief of the Revere Police Department at the time, recommended to the Mayor that the city bypass the Appellant.[2] (Reardon Test.)
36. As there was a new Mayor in Revere at the time, Captain Reardon (then Chief) gave the Mayor a "run-down" of the hiring process, as well as his recommendation whom to hire; the Mayor adopted Captain Reardon's recommendation and bypassed the Appellant. (Reardon Test.)
37. The Respondent sent the Appellant a bypass letter dated January 20, 2012 as the Respondent hired candidates who ranked below him on the Certification. (Ex. 2; Pre-Hearing Conference Stipulated Facts)
38. The bypass letter states that the Appellant was bypassed because:

> Mr. Leonard Dibartolomeo's (sic) background investigation revealed that his License to Carry a Firearm has been suspended as he has been deemed unsuitable due an (sic) arrest for a domestic violence incident in Swampscott, Massachusetts. An additional factor in determining his LTC suspension was that he had been residing in Swampscott while still carrying his LTC from the City of Revere. It is also notable

[2] Ms. A and Captain Reardon are related. Specifically, Ms. A is Captain Reardon's brother's niece by marriage. (Reardon Test.) However, Captain Reardon was unaware of the family connection with Ms. A and her involvement in the January 14, 2011 events until a few weeks prior to the full hearing before the Commission. (Reardon Test.) There is no evidence that Captain Reardon's judgment was inappropriately affected by this somewhat distant relationship.

> that the Swampscott Police reported that while investigating the domestic assault and battery, Mr. Dibartolomeo (sic) ignored the Police Officer's attempts to get him to come out of the residence. Subsequently, the Swampscott Police called the State Police STOP (SWAT) Team for assistance due to the violent nature of the incident, Mr. Dibartolomeo's (sic) LTC and his refusal to come out of his dwelling. Eventually Mr. Dibartolomeo (sic) did come out of the residence prior to the STOP Team's arrival. Mr. Dibartolomeo (sic) also has arraignments for violating the substance abuse laws for possession of Class E. Swampscott Police reported that substances believed to be steroids and syringes were seized from Dibartolomeo's (sic) bedroom during a search warrant executed at Mr. Dibartolomeo's (sic) residence. On his recruit candidate packet, he denied ever using steroids. Additionally, he has had a domestic violence restraining order issued against him from a female unrelated to the Swampscott incident. Due to Mr. Dibartolomeo's (sic) disregard for the law and law enforcement officers, his unsuitability to carry a firearm, and his propensity for violence, we decline to hire him.

(Ex. 2)

39. The bypass letter provides positive reasons for hiring three individuals who were hired and ranked below the Appellant. (Ex. 2)

40. The Appellant filed a timely appeal at the Commission on February 12, 2012. (Admin. Notice)

Applicable Civil Service law

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n., 43 Mass.App.Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of

Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). *See* Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). Appeals to the Commission must be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Comm'n., 31 Mass.App.Ct. 315 (1991); G.L. c. 31, § 43.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). *See* Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003). Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge, 43 Mass.App.Ct. at 304.

Analysis

The Respondent bases its bypass of the Appellant on a number of factors, including the loss of his LTC, criminal charges and an ABO against the Appellant, and related events. The Appellant denies the criminal charges and/or indicates that criminal charges and ABO against him were dropped before he was bypassed. Further, he asserts that the ABO was a civil restraining order, not a criminal proceeding, that was issued against him a long time ago when he

was in high school and that was subsequently vacated. Further, the Appellant points out that his LTC has been reinstated.

I first address the ABO obtained against the Appellant. Approximately ten years ago, the Appellant's high school girlfriend sought and obtained a civil ABO against the Appellant after he and his sister allegedly threatened to physically harm her and after the Appellant allegedly fought his girlfriend's new boyfriend with a weapon. (Ex. 9) The Respondent argues that the ABO supports its decision to bypass the Appellant, showing that the Appellant has poor judgment and does not respect the law. The Appellant asserted at the hearing before the Commission that his high school girlfriend had no basis for the ABO and that she sought the order in retaliation for his decision not to go to prom with her. (DiBartolomeo Test.) However, the issuance of an ABO, though not a criminal matter, is issued by a judge based on, among other things, the victim's sworn affidavit and any pertinent police records. Police are expected to show appropriate restraint during the performance of their duties, including when they respond to domestic violence incidents. At the time of the incidents leading to the issuance of the ABO, the Appellant and his then girlfriend were in high school. Although the ABO was issued against the Appellant years ago and the ABO was vacated following a court hearing, the existence of the ABO demonstrated that, at least at that time, the Appellant lacked restraint, a quality that police officers must have. While the ABO, by itself, may not have been a sound and sufficient reason to bypass the Appellant, it supports the Respondent's other reasons for bypassing the Appellant.

The Respondent also justified its decision to bypass the Appellant by stating that the Appellant's conduct, when he smashed Ms. A's car window with a baton, was felonious, which precludes him from being hired as a police officer. G.L. c. 268, § 1 ("No person who has been convicted of any felony shall be appointed as a police officer of a city, town or district.") The

Appellant testified that he did not smash Ms. A's car window and that he did not learn that the window had been smashed until he came outside to speak with the police. However, more than a preponderance of the evidence contradicts the Appellant's testimony in this regard. First, the Swampscott Police Report indicates that both Ms. A and Ms. B observed the Appellant strike Ms. A's car with some sort of bat. Secondly, the police found a black baton concealed inside the Appellant's apartment that matched Ms. A's description of the weapon used in the assault, as well as the description of the 911 caller. In addition, it is unlikely that a third party person was at the Appellant's apartment at the same time on January 14, 2011 and smashed the window of Ms. A's car randomly. Next, it is unlikely that one of the two young women inside the vehicle would break their own car window. The Appellant's conduct may have been his response to Ms. A's conduct that night. However, Ms. A's conduct does not justify the Appellant's conduct and he, again, failed to show restraint. In any event, criminal charges were filed against the Appellant for his conduct on January 14, 2011, which charges were ultimately dismissed prior to the Appellant's bypass. Without a conviction, G.L. c. 268, § 1 is not applicable. However, even though the charges against the Appellant were dropped, the Respondent was justified in basing its bypass on the Appellant's egregious conduct towards Ms. A and Ms. B on January 14, 2011. *See* Acosta v. Dept. of Corrections, 23 MCSR 605, 607 (2010)(Appointing Authority may consider charges that were dropped when determining whether or not to hire a candidate.) *See also* City of Boston v. Boston Police Patrolmen's Ass'n., 443 Mass. 813, 820 (2005)(It is the felonious misconduct, not a conviction of it, that is determinative.); Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182 (2010)(Appointing Authority need not prove the misconduct upon which it relied as reasonable justification for bypassing the candidate.); and Soares v. Brockton Police Department, 14 MCSR 109 (2001)(Absent a statute that time barred

consideration of a job applicant's criminal record, an appointing authority's review of the criminal record is justified.)(*citing* City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300 (1997)(*citing* Selectman of Wakefield v. Judge of First District Court of E. Middlesex, 262 Mass. 477, 482 (1928)).

The Respondent further justified the Appellant's bypass on his initial refusal to exit the apartment when ordered to do so by the police on January 14, 2011. The Appellant testified that he did not want to go outside because he did not want to get Ms. A in trouble. Whether the Appellant was concerned about getting Ms. A in trouble or about getting in trouble himself, it was wrong for him to disobey the police, which, to his credit, he admitted at the full hearing at the Commission. The Appellant's conduct in this regard shows a lack of respect for law enforcement and poor judgment, for which the Appointing Authority was justified in bypassing the Appellant, in view of the Appellant's other conduct on January 14, 2011.

The Respondent also argues that because the Appellant was found on January 14, 2011 to be in possession of syringes and controlled substances marked Enanthane and Durabolin, both steroids, the Appellant lied on his application when he said that he had never used steroids. The Appellant denies that the substances belonged to him and points out that these charges against him also were dropped before he was bypassed. In any event, the Appellant argues the police did not have enough proof that the substances found in his apartment belonged to him, that the only connection between the Appellant and the substances was that the police found a military uniform on the floor of the room where the police found the substances and the Appellant is in the military. The Appellant also argues that the substances police obtained in his apartment were never tested and, therefore, it cannot be said that the substances were steroids. The Respondent does not argue that it bypassed the Appellant based on a conviction stemming from the

substances found in his apartment but that his application asserted that he had not used steroids. However, the controlled substances were not tested and identified as steroids. In addition, since Mr. H apparently stayed at the Appellant's apartment frequently about that time, the substances may have belonged to him. Lastly, the existence of a military uniform found on the floor in the room where police found the substances does not sufficiently connect the substances to the Appellant. Therefore, the Appellant's use of controlled substances was not established by a preponderance of the evidence and the City was not justified in bypassing the Appellant for having asserted on his application that he had not used steroids.

The Appellant argues generally that the Department wrongly relied on the Swampscott police report when making its determination to bypass him because the report contains hearsay. Specifically, the Appellant alleges that the police report is hearsay because none of the officers who authored the police report were present to witness the Appellant shatter Ms. A's car window. "Police reports containing eyewitness accounts of the evidence of the incident in question, though admittedly hearsay, bear sufficient indicia of reliability to be considered as evidence of the conduct alleged." Boston Police Dept. v. Suppa, et al, 79 Mass.App.Ct. 1121 (Rule 1:28, May 27, 2011, Docket No. 10-P-713) Therefore, officer Bruzzese's and the Department's reliance on the Swampscott police report containing Ms. A's and Ms. B's eyewitness account of the Appellant's conduct when deciding to bypass the Appellant was appropriate. Moreover, the Commission is authorized to consider such information pursuant to G.L. c. 30A, §11(2), which provides, "Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious

affairs…." Id. Surely a police report meets this standard; the Appellant gives no reason for us to conclude otherwise. *See* Wardell v. Director of Div. of Employment Security, 392 Mass. 433, 437 (1986) *quoting* G.L. c. 30A § 11(2); Suppa, 79 Mass.App.Ct. 1121 (2011); *see also* Covell v. Department of Social Servs., 439 Mass. 766 (2003)(concluding that "substantial evidence may be based on hearsay alone if that hearsay has 'indicia of reliability.'") Covell, 439 Mass. at 786 *quoting* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n., 401 Mass. 526, 530 (1988).

Finally, the Respondent bases its bypass of the Appellant on the fact that at the time the bypass decision was made, the Appellant's LTC had been revoked by its Police Chief. Clearly, police officers have to be able to carry a gun. Therefore, a candidate who is unable to carry a gun will not be able to function in this regard. The Appellant argues that because his LTC was reinstated, the Respondent was not justified in bypassing the Appellant on this basis. However, the Appointing Authority issued a bypass letter to the Appellant on January 20, 2012. It was not until January 31, 2012 that a court reinstated the Appellant's LTC, which was seventeen (17) days after the date of the bypass letter. However, even if the Appellant's LTC had been returned earlier, it was the Respondent's Police Chief who suspended the LTC in the first place, indicating he thought the Appellant should not have a LTC. There was no persuasive evidence to warrant an inference that the revocation of the LTC was not justified at the time. Further, given the proximity in time of the suspension of the Appellant's LTC, along with the events on January 14, 2011 that led to suspension of his LTC, to the Appellant's application for employment at the Respondent's Police Department, the Respondent was further justified in bypassing the Appellant.

Conclusion

For the reasons stated herein, the Respondent has established, by a preponderance of the evidence, that it had sound and sufficient reasons to bypass the Appellant and, therefore, the appeal is ***denied***.

CIVIL SERVICE COMMISSION

_____
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, Marquis and Stein, Commissioners on October 18, 2012.

A True Record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision as stated below.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days from the effective date specified in this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
Kevin P. Foley, Esq. (for Appellant)
Daniel E. Doherty, Esq. (for Respondent)
John Marra, Esq. (HRD)